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tendency on the part of appellate courts to rigidly supervise his exercise of discretion.¹⁸

E. D. KUYKENDALL, JR.

Insurance—Construction of "Violation of Law" Exception in Policy.

An action was brought on a life insurance policy which provided that double indemnity should not be payable if death resulted from violation of law. Insured was killed when he ran his car into a culvert on the left side of the highway. The court below instructed the jury that if insured "inadvertently and involuntarily drove his car upon the left hand side of the road, he may have been guilty of negligence, but he was not guilty of violation of law in so doing." *Held*, that this instruction was erroneous.¹

Some courts in construing such conditions have held that there must be a violation of the criminal law.² Generally, this clause includes the commission of a misdemeanor,³ but where the associated exceptions impute the commission of a felony, the courts hold, in accordance with the maxim *noscitur a sociis*, that the exception extends only to a violation of law which amounts to a felony.⁴ The resulting death may be accidental⁵ or caused by the intentional act of another.⁶ However, in order that the insurer may be discharged the

¹⁸ *Hickory v. United States*, 160 U. S. 408, 16 Sup. Ct. 327, 40 L. ed. 474, 480 (1896) and cases cited.

¹ *Mutual Life Ins. Co. of New York v. Grimsley*, 168 S. E. 329 (Va. 1933).

² *Ragan v. Provident Life & Acc. Ins. Co.*, 209 Iowa 1075, 229 N. W. 702 (1930) (riding in box car held no crime such as to avoid accident policy); see *Cluff v. Mutual Ben. Life Ins. Co.*, 13 Allen (Mass.) 303, 317 (1866) (attempting to forcefully take personal property from debtor).

Some courts say it need not necessarily be a violation of the criminal law. *Bloom v. Franklin Life Ins. Co.*, 97 Ind. 478, 49 Am. Rep. 469 (1884). In *Travelers' Ins. Co. v. Seaver*, 19 Wall. 531, 22 L. ed. 155 (1873) where insured was killed in horse race, the court said, "It was against the general species of danger attending nearly all infractions of law that the exception was directed."

³ *Travelers' Ins. Co. v. Seaver*, *supra* note 2 (horse-racing made a misdemeanor); *Wolff v. Conn. Mut. Life Ins. Co.*, 5 Mo. App. 236 (1878). *Contra*: *Supreme Council of Royal Arcanum v. Quarles*, 23 Ga. App. 104, 97 S. E. 557 (1918).

⁴ *Harper's Adm'r v. Phoenix Ins. Co.*, 19 Mo. 506 (1854) ("if insured should die in consequence of a duel, or by the hands of justice, or in the known violation of any law of this state"); *cf.* *Brown v. Supreme Lodge K. P.*, 83 Mo. App. 633 (1900) (all the associated exceptions were not felonies).

⁵ *Murray v. New York Life Ins. Co.*, 96 N. Y. 614, 48 Am. Rep. 658 (1884).

⁶ *Osborne v. People's Benev. Industrial Life Ins. Co. of La.*, 19 La. App. 667, 139 So. 733 (1932).

In some cases the test has been whether the insured was the aggressor. *Woodmen of the World v. Walters*, 124 Ky. 663, 99 S. W. 930 (1907); *Payne*

violation of law by the insured must be the proximate,⁷ though not the sole,⁸ cause of the death or injury. The violation of law must be voluntary, and therefore, where the insured is insane the insurer is not discharged,⁹ but the exemption from liability is not affected by the fact that insured was intoxicated at the time of the violation of law.¹⁰

The conduct of the insured has been held to be a violation of law within such exceptions where the insured: assaulted one who shot him;¹¹ unlawfully pointed a gun at another;¹² committed an assault and battery on wife of man who shot him;¹³ was violating Sunday laws;¹⁴ was placing trot-line to prevent free passage of fish;¹⁵ was trying to get on moving car in violation of statute;¹⁶ was alighting from moving train likewise prohibited;¹⁷ submitted to an abortion

v. Union Life Guards, 136 Mich. 416, 99 N. W. 376 (1904). Others declare that if the killing was justifiable, the insurer is not responsible. *Railway Mail Assoc. v. Moseley*, 211 Fed. 1 (C. C. A. 6th, 1914); *Am. Nat. Life Ins. Co. v. White*, 126 Ark. 483, 191 S. W. 25 (1916). Others say the killing need not be justifiable. *Hobbs v. Sovereign Camp, W. O. W.*, 212 Ala. 467, 102 So. 625 (1925). Where the action on the policy is defended on the theory that the member was killed by another in self-defense, evidence of the third person's indictment, trial, and acquittal is inadmissible. *Sovereign Camp, W. O. W. v. McDonald*, 109 Miss. 167, 68 So. 74 (1915).

⁷ *Supreme Lodge v. Beck*, 181 U. S. 49, 21 Sup. Ct. 532, 45 L. ed. 741 (1901); *Rowe v. United Commercial Travelers' Assoc.* 186 Iowa 454, 172 N. W. 454 (1919).

⁸ *Whyte v. Union Mut. Casualty Co.*, 209 Iowa 917, 227 N. W. 518 (1929).

⁹ *Howle v. Eminent Household of Columbian Woodmen*, 118 Ark. 226, 176 S. W. 313 (1915); *Woodmen of the World v. Dodd*, 134 S. W. 254 (Tex. Civ. App. 1911).

However, a provision that the policy shall be void if death occurs in consequence of a violation of law, whether the insured is sane or insane, is valid. *Sovereign Camp, W. O. W. v. Hunt*, 136 Miss. 156, 98 So. 62 (1923).

¹⁰ *Eminent Household of Columbian Woodmen v. Howle*, 124 Ark. 224, 187 S. W. 176 (1916); *Bloom v. Franklin Life Ins. Co.*, 97 Ind. 478, 49 Am. Rep. 469 (1884).

¹¹ *Osborne v. People's Benev. Industrial Life Ins. Co. of La.*, 19 La. App. 667, 139 So. 733 (1932); *Hobbs v. Sovereign Camp, W. O. W.* 212 Ala. 467, 102 So. 625 (1925).

¹² *North Carolina Mut. Life Ins. Co. v. Evans*, 38 Ga. App. 178, 143 S. E. 449 (1928).

¹³ *Bloom v. Franklin Life Ins. Co.* 97 Ind. 478, 49 Am. Rep. 469 (1884).

¹⁴ *Duran v. Standard Life & Acc. Ins. Co.* 63 Vt. 437, 22 Atl. 530 (1891); cf. *Eaton v. Atlas Acc. Ins. Co.*, 89 Me. 570, 36 Atl. 1048 (1897) (insurer liable where insured was injured while riding bicycle from funeral on Sunday).

¹⁵ See *Collins v. Bankers' Acc. Ins. Co.*, 96 Iowa 216, 64 N. W. 778, 779 (1895).

¹⁶ *Flower v. Continental Casualty Co.*, 140 Iowa 510, 118 N. W. 761 (1908).

¹⁷ *Poole v. Imperial Mut. Life & Health Ins. Co.*, 188 N. C. 468, 125 S. E. 8 (1924) (question for jury whether there was a known violation of law).

which was not a medical necessity;¹⁸ was gambling;¹⁹ was participating in horse race;²⁰ was driving car at an unlawful rate of speed;²¹ was transporting liquor;²² was driving while intoxicated;²³ was attempting to escape with money after committing robbery.²⁴

On the other hand, the liability of insurer was not discharged where the insured: ran his car on sidewalk and into pillar on left-hand side of the street;²⁵ cursed and abused another but was shot before he committed any act;²⁶ shot himself while carrying pistol on highway;²⁷ drove a motorcycle which was not licensed and registered according to law;²⁸ committed suicide;²⁹ rode on running board of a truck in violation of an ordinance;³⁰ committed abortion upon herself;³¹ swung from moving car;³² rode in box car;³³ drank "bootleg" whiskey served by his host;³⁴ attempted sexual intercourse with an-

¹⁸ *Wells v. New England Mut. Life Ins. Co. of Boston*, 191 Pa. St. 207, 43 Atl. 126 (1899).

¹⁹ *Landry v. Independent Nat. Life Ins. Co.*, 17 La. App. 10, 135 So. 110 (1931).

²⁰ *Travelers' Ins. Co. v. Seaver*, 19 Wall. 531, 22 L. ed. 155 (1873).

²¹ *Rowe v. United Commercial Travelers' Ass'n*, 186 Iowa 454, 172 N. W. 454 (1919); *Witt v. Spot Cash Ins. Co.*, 128 Kan. 155, 276 Pac. 804 (1929); see *Davilla v. Liberty Life Ins. Co.*, 114 Cal. App. 308, 299 Pac. 831, 835 (1931).

²² *Flath v. Bankers' Casualty Co.*, 49 N. D. 1053, 194 N. W. 739 (1923).

²³ *Flanagan v. Provident Life & Acc. Ins. Co.*, 22 F. (2d) 136 (C. C. A. 4th, 1927).

²⁴ *Haley v. Prudential Ins. Co.*, 189 Ill. 317, 59 N. E. 545 (1901). *Contra*: *Jordan v. Logie Suprema De La Alianza Hispano-Americana*, 23 Ariz. 584, 206 Pac. 162 (1922); *Ben Hur Life Assoc. v. Cox*, 181 N. E. 528 (Ind. App. 1932) commented upon (1932-33) 31 MICH. L. REV. 856; *Griffin v. Western Ass'n*, 20 Neb. 620, 31 N. W. 122 (1886).

²⁵ *Zohner v. Sierra Nevada Life & Casualty Co.*, 114 Cal. App. 85, 299 Pac. 749 (1931).

²⁶ *Eminent Household of Columbian Woodmen v. Gallant*, 194 Ala. 680, 69 So. 884 (1915); *Empire Life Ins. Co. v. Einstein*, 12 Ga. App. 380, 77 S. E. 209 (1913).

²⁷ *Woodmen of the World v. Wright*, 7 Ala. App. 255, 60 So. 1006 (1913).

²⁸ *Fischer v. Midland Casualty Co.*, 189 Ill. App. 486 (1915).

²⁹ *Kerr v. Minn. Mut. Ben. Ass'n*, 39 Minn. 174, 39 N. W. 312 (1888) (suicide to avoid arrest); *Darrow v. Family Fund Soc.*, 116 N. Y. 537, 22 N. E. 1093 (1889); *cf. Shipman v. Protected Home Circle*, 174 N. Y. 398, 67 N. E. 83 (1903).

³⁰ *Reynolds v. Life & Casualty Ins. Co. of Tenn.*, 166 S. C. 214, 164 S. E. 602 (1932).

³¹ *Simmons v. Victory Industrial Life Ins. Co. of La.*, 18 La. App. 660, 139 So. 68 (1932).

³² *Nat. Life & Acc. Ins. Co. v. Lokey*, 166 Ala. 174, 52 So. 45 (1910). (The ordinance invoked, however, prohibited merely getting on while car moving.)

³³ *Ragan v. Provident Life & Acc. Ins. Co.*, 209 Iowa 1075, 229 N. W. 702 (1930).

³⁴ *Zurich Gen'l Acc. & Liability Ins. Co. v. Flickinger*, 33 F. (2d) 853 (C. C. A. 4th, 1929).

other's wife;³⁵ was living in a state of fornication with his mistress;³⁶ was assaulted without provocation after first combat had ceased.³⁷

In *Zohner v. Sierra Nevada Life & Casualty Co.*,³⁸ where insured was killed when he drove his car against a pillar on the sidewalk on the left side of the street, recovery was allowed though the policy excluded injuries sustained while violating law. The California court said that the mere fact that a car is driven upon the left side of the highway or across a sidewalk does not, under all circumstances, constitute a violation of law. This seems to be a better result than that reached by the court in the principal case. The rule requiring one to drive on the right side of the road applies ordinarily only when one vehicle meets another.³⁹ What difference should it make in the liability of the insurer whether the insured while driving along a straight unobstructed highway happened to run off the left instead of the right-hand side of the road?

JULE McMICHAEL.

Judgments—Effect of Personal Property Exemption.

By virtue of the North Carolina Constitution¹ a resident debtor is entitled to \$500 personal property free from execution for the collection of a debt, this exemption being subject to allotment upon demand at any time before the process is executed by a sale.²

In a recent North Carolina case³ the plaintiff held a valid judgment against the defendant for \$3,650. Execution had been returned unsatisfied. Defendant was the owner of four life insurance policies under whose health benefit clauses he was receiving \$300 monthly. Plaintiff, by supplemental proceedings, sought to reach this \$300 monthly benefit and apply it on his judgment. The court held that the defendant should be allowed to select the \$300 each month as a part of his \$500 personal property exemption, so that at all times he

³⁵ *Supreme Lodge K. P. v. Crenshaw*, 129 Ga. 195, 58 S. E. 628 (1907).

³⁶ *Acc. Ins. Co. v. Bennett*, 90 Tenn. 256, 16 S. W. 723 (1891).

³⁷ *Grose v. Liberty Industrial Ins. Co.*, 6 La. App. 390 (1927).

³⁸ *Supra* note 25.

³⁹ *Mike v. Levy*, 210 App. Div. 813, 206 N. Y. Supp. 4 (1924); *Weinstein v. Wheeler*, 135 Ore. 518, 295 Pac. 196 (1931); *Segerstrom v. Lawrence*, 64 Wash. 245, 116 Pac. 876 (1911); see *Dole v. Lublin*, 112 Conn. 603, 153 Atl. 856, 858 (1931); *Reid v. McDevitt*, 140 So. 722, 723 (Miss. 1932).

¹ Article X §1.

² N. C. CODE ANN. (Michie, 1931) §737.

³ *Commissioner of Banks v. Yelverton*, 204 N. C. 441, 168 S. E. 505 (1933).